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|---|-------------|----------------------|---------------------------------|------------------------|
| 10/669,545  | 09/23/2003  | Joshua T. Goodman    | MS303964.1/MSFTP440US           | 4645                   |
| 27195   | 7590        | 08/07/2007           |                                 |                        |
| AMIN. TUROCY & CALVIN, LLP<br>24TH FLOOR, NATIONAL CITY CENTER<br>1900 EAST NINTH STREET<br>CLEVELAND, OH 44114 |             |                      | EXAMINER<br>HOMAYOUNMEHR, FARID |                        |
|   |             |                      | ART UNIT<br>2132                | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/669,545

Applicant(s)

GOODMAN ET AL.

Examiner

Farid Homayounmehr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-25, 27-31, 67 and 68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-25, 27-31, 67 and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to communications: application, filed 9/23/2003; amendment filed 5/25/2007.
2. Claims 1-31, 65, 67 and 68 are pending in the case. Claims 2, 26, and 65 have been cancelled.

### ***Election/Restrictions***

3. This application contains claims 32-64, 66, 69 and 70 drawn to an invention nonelected with traverse in Paper No. 20070216. Applicant has not provided any argument to traverse the Election/Restriction requirement. Therefore the Restriction is considered Final. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### **Response to Arguments**

4. Applicant's arguments have been fully considered, but are not persuasive:
  - I. Rejection of Claims 1-24, 65, 67 and 68 Under 35 U.S.C. §101

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Independent claim 1 has been amended to overcome the 101 rejection. In particular, claim 1 as amended is directed towards a system that facilitates identifying human interaction, comprising a computer processor for executing the following software components, the system is recorded on a computer-readable medium and capable of execution by a computer, comprising several elements as described in the claim.

However, as described by the claim, the system is recorded on a computer readable medium. The system also comprises a computer processor for executing software.

Therefore, the system includes computer hardware (the processor), and the system is recorded on the computer readable medium. It is clear that the hardware cannot be recorded on computer readable medium. Therefore, the amendment to claim has rendered the claim indefinite. In addition, it is not clear if the claim is directed to a computer hardware (processor) or software that is recorded on computer readable medium, or a combination of both. Therefore, the rejection under section 101 is maintained until the claim language clearly defines the components of the system.

It is noted that a minor change to claim language may be enough to overcome both the rejections under 101 and 112 second paragraph. For example, stating: "a system that facilitates identifying human interaction, comprising a computer processor executing software components, the software components recorded on a computer-readable medium and being executed by said computer processor" may be enough to overcome said rejections. The same applies to claims 67 and 68.

## II. Rejection of Claims 1-5 Under 35 U.S.C. §102(e)

Applicant argues: "Pinkas *et al.* does not teach or suggest each and every element as set forth in the subject claims." In particular applicant argues: "Pinkas *et al.* merely discloses establishing a secure channel between a human user and an application running on a computer system, *via* generating a unique identifier (PIN) associated with a user. (See pg. 2, paragraph [0021 ]). Applicants' claimed system utilizes order-based HIPs from a database to determine that access has been initiated by a human. Order-based HIPs, unlike sequence-based HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements." However, the PIN must also be entered in the correct order. A PIN, which is a plurality of objects (characters), and must be entered in sequence, represents an order-based problem, and applicant has not provided any reason to the contrary.

Applicant further argues: "Pinkas *et al.* does not utilize an order-based HIP to distinguish between a computer and a human." However, as described in the Abstract, Pinkas teaches identifiers in a format that is recognizable by a human and not readily recognizable by an automated agent.

## III. Rejection of Claims 6-31, 65, 67 and 68 Under 35 U.S.C. §103(a)

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With regards to the above said claims, and particularly claim 25, applicant again argues that Order-based HIPs, unlike sequence-based HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements. However, as mentioned above, the PIN must also be entered in the correct order, and therefore, meets the requirements of the claim.

With regards to claim 25, the applicant also argues that Mizrah is not being used to teach the requirements of claim 25, and based on that reason concludes that Mizrah does not teach the requirements of claim 25. However, the requirements of claim 25 are taught by Pinkas, as discussed above and detailed in the following section. Examiner also notes that the fact Mizrah is not being used in rejection of claim 25 is not an explicit or implicit admission that Mizrah does not teach the requirements of claim 25.

### **35 USC § 112 Sixth Paragraph**

5. Claim 68 uses the phrase "means for" to describe claim limitations. Therefore, the first prong of the 3-prong analysis to invoke treatment of the claim limitations under 35 U.S.C. 112, Sixth paragraph is passed. However, the claim will not be treated under section 112, Sixth paragraph because the claim fails to pass the third prong of the 3-prong test. As described in the following rejection under section 112 second paragraph, claim 68 fails to clearly define the invention. Particularly, the claim is directed to a

system that includes a processor. The system is also recorded on a computer readable medium, but a processor cannot be recorded. Therefore, the general structure of the system is undefined. The claim also includes several "means" that are capable of execution by a computer. Therefore, it appears that the "means" is "software". However, "software" is not a structure. Therefore, the structure of the "means for" is not defined, and it is not possible to determine if the phrase "means for" is modified by the structure for achieving the specified function (see MPEP section 2181). Accordingly, the claim does not pass the third prong, and will not be treated under section 112, Sixth paragraph.

If the applicant intends to treat claim 68 under section 112, Sixth paragraph, the applicant is hereby requested to identify the parts of the specification, which explicitly state, with reference to the terms and phrases of the claim element, what structure or act performs the function recited in the claim element.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 67 and 68 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claimed invention is directed to a system. As described by the claim, the system is recorded on a computer readable medium. The system also comprises a computer processor for executing software. Therefore, the system includes computer hardware (the processor), and the system is recorded on the computer readable medium. It is clear that the hardware cannot be recorded on computer readable medium. Therefore, the structure which goes to make up of the device is undefined.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-24, and 65, 67, and 68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9.1. Claims 1-24 are directed to a system, which per page 7, lines 23 to 30 of specification is defined as: "As used in this application, the terms "component" and "system" are intended to refer to a computer-related entity, either hardware, a combination of hardware and software, software, or software in execution. For example,



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a component may be, but is not limited to being, a process running on a processor, a processor, an object, an executable, a thread of execution, a program, and/or a computer. By way of illustration, both an application running on a server and the server can be a component. One or more components may reside within a process and/or thread of execution and a component may be localized on one computer and/or distributed between two or more computers."

Therefore, applicant's claims 1-24 are directed to components that are computer software, which is a non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinkas (US Patent Application publication No. 2004/0073813), filed 4/25/2003.

11.1. As per claim 1, Pinkas is directed to a system facilitates identifying human interaction (abstract) comprising a computer processor for executing the following software components, the system is recorded on a computer-readable medium and capable of execution by a computer: an access control component that controls access to one of a computer-based action and computer-based application (parag. 21-22 describes an authentication system, which is a form of an access control to computer applications); and an identification component that facilitates determining that access is initiated by a human (parag. 21, where RTT distinguishes between a human and an automated program), the identification component presenting an order-based problem to be solved before access is allowed (the pin must be identified by the user and returned to the server for authentication. The pin must be entered in sequence, and therefore representing a solution to an order-based problem. This is clearly shown by Pinkas in, for example, parag 34), the order-based problem comprising an arrangement of a plurality of objects whereby a user is asked to correctly identify at least a subset of the objects as well as to identify them in a particular order (the pin is comprised of characters, which are a form of an object, and must be recognized and entered in order as described in rejection of claim 1) the order being based at least in part upon a set of instructions provided to the user (parag 31 to 34 indicates that the user must follow instructions to enter the PIN), and the identification component communicating with an order-based problem database to retrieve order-based problems as needed (As shown in Fig. 1 and associated text, the PIN is generated in

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item 103, which is in communication with the server. Note also that parag. 32 shows that the PIN information is stored in memory).

11.2. As per claim 3, Pinkas is directed to the system of claim 2, the objects comprising images, pictures, shapes, characters, and other visual elements which are identifiable by a human (the characters in the pin are identifiable by a human).

11.3. As per claim 4, Pinkas is directed to the system of claim 3, wherein any one of the images, pictures, shapes, characters, and other visual elements vary in at least one of size, dimension, color, and distortion (parag. 24).

11.4. As per claim 5, Pinkas is directed to the system of claim 1, the order-based problem being an order-based human interactive proof (HIP) (parag. 21, where it is shown a human interaction is detected and use of RTT is suggested).

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 6-31, 65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinkas as applied to claims 1-5 above, and further in view of Mizrah (U.S. Patent Application Publication No. 2004/0225880, filed 5/7/2003).

13.1. As per claim 6, Pinkas is directed to the system of claim 1, the order-based problem being a "start to end" HIP wherein a user is required to find a path of a consistent type and identify objects such as characters along the path (per parag. 24, the characters must be recognized along a path from start to end. Pinkas suggests recognizing characters along a path. However, Pinkas does not specifically suggest recognizing a path. Mizrah clearly teaches recognizing a path by the user in Figs. 8-12 and associated text.

Pinkas and Mizrah are analogous art as they are both directed to establishment of a secure channel between a user and a server. At the time of invention, it would have been obvious to a person skilled in art to incorporate Mizrah's teachings of recognizing a path to the system of Pinkas. The motivation to do so is suggested by Pinkas parag. 24, where it suggests mapping the characters in different locations on screen, and also use of different patterns that is recognizable by a human).

13.2. As per claim 7, Pinkas and Mizrah are directed to the system of claim 6, wherein the path of a consistent type comprises a subset of objects which are connected by a consistent type of connector, the connector being selected from a group consisting of

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any one of arrows, lines, dotted lines, dashed lines, and shapes (use of arrows to describe the path is suggested by Mizrah Fig. 9 and associated text).

13.3. Limitations of claims 8-24 are directed to use and modification of different types of shapes and patterns, inclusion of background and foreground noise to partially obscure the objects, use of different colors, sizes and other modifications to the image to make it recognizable by human and not by a machine, which are well know techniques to a person skilled in the art. Barring any unexpected results, all modifications and addition of noise included in claims 8-24 would have been obvious to a person skillful in the art of human interaction detection.

13.4. Limitations of claims 25, 27-30 is substantially the same as claims 1, 3-24 above.

13.5. As per claim 31, Pinkas and Mizrah are directed to the method of claim 30, the acceptable answer being at least one of the following: a correct answer; and an answer consistently received from a percentage of users, whereby the percentage exceeds a minimum threshold (a correct answer is an acceptable answer in Pinkas).

13.6. Claims 2, 26, and 65 have been cancelled by the applicant.

13.7. Limitations of claims 67 and 68 are substantially the same as claims 1, 3-25, 27-31 above.

### Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farid Homayounmehr whose telephone number is (571) 272-3739. The examiner can be normally reached on 9 hrs Mon-Fri, off Monday biweekly.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements.” However, the PIN must also be entered in the correct order. A PIN, which is a plurality of objects (characters), and must be entered in sequence, represents an order-based problem, and applicant has not provided any reason to the contrary.

Applicant further argues: “Pinkas *et al.* does not utilize an order-based HIP to distinguish between a computer and a human.” However, as described in the Abstract, Pinkas teaches identifiers in a format that is recognizable by a human and not readily recognizable by an automated agent.

### III. Rejection of Claims 6-31, 65, 67 and 68 Under 35 U.S.C. §103(a)

With regards to the above said claims, and particularly claim 25, applicant again argues that Order-based HIPs, unlike sequence-based HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements. However, as mentioned above, the PIN must also be entered in the correct order, and therefore, meets the requirements of the claim.

With regards to claim 25, the applicant also argues that Mizrah is not being used to teach the requirements of claim 25, and based on that reason concludes that Mizrah

does not teach the requirements of claim 25. However, the requirements of claim 25 are taught by Pinkas, as discussed above and detailed in the following section. Examiner also notes that the fact Mizrah is not being used in rejection of claim 25 is not an explicit or implicit admission that Mizrah does not teach the requirements of claim 25.

### **35 USC § 112 Sixth Paragraph**

4. Claim 68 uses the phrase "means for" to describe claim limitations. Therefore, the first prong of the 3-prong analysis to invoke treatment of the claim limitations under 35 U.S.C. 112, Sixth paragraph is passed. However, the claim will not be treated under section 112, Sixth paragraph because the claim fails to pass the third prong of the 3-prong test. As described in the following rejection under section 112 second paragraph, claim 68 fails to clearly define the invention. Particularly, the claim is directed to a system that includes a processor. The system is also recorded on a computer readable medium, but a processor cannot be recorded. Therefore, the general structure of the system is undefined. The claim also includes several "means" that are capable of execution by a computer. Therefore, it appears that the "means" is "software". However, "software" is not a structure. Therefore, the structure of the "means for" is not defined, and it is not possible to determine if the phrase "means for" is modified by the structure for achieving the specified function (see MPEP section 2181). Accordingly, the claim does not pass the third prong, and will not be treated under section 112, Sixth paragraph.



If the applicant intends to treat claim 68 under section 112, Sixth paragraph, the applicant is hereby requested to identify the parts of the specification, which explicitly state, with reference to the terms and phrases of the claim element, what structure or act performs the function recited in the claim element.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 67 and 68 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claimed invention is directed to a system. As described by the claim, the system is recorded on a computer readable medium. The system also comprises a computer processor for executing software. Therefore, the system includes computer hardware (the processor), and the system is recorded on the computer readable medium. It is clear that the hardware cannot be recorded on computer readable medium. Therefore, the structure which goes to make up of the device is undefined.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-24, and 65, 67, and 68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8.1. Claims 1-24 are directed to a system, which per page 7, lines 23 to 30 of specification is defined as: "As used in this application, the terms "component" and "system" are intended to refer to a computer-related entity, either hardware, a combination of hardware and software, software, or software in execution. For example, a component may be, but is not limited to being, a process running on a processor, a processor, an object, an executable, a thread of execution, a program, and/or a computer. By way of illustration, both an application running on a server and the server can be a component. One or more components may reside within a process and/or thread of execution and a component may be localized on one computer and/or distributed between two or more computers."

Therefore, applicant's claims 1-24 are directed to components that are computer software, which is a non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinkas (US Patent Application publication No. 2004/0073813), filed 4/25/2003.

10.1. As per claim 1, Pinkas is directed to a system facilitates identifying human interaction (abstract) comprising a computer processor for executing the following software components, the system is recorded on a computer-readable medium and capable of execution by a computer: an access control component that controls access to one of a computer-based action and computer-based application (parag. 21-22 describes an authentication system, which is a form of an access control to computer applications); and an identification component that facilitates determining that access is initiated by a human (parag. 21, where RTT distinguishes between a human and an automated program), the identification component presenting an order-based problem to be solved before access is allowed (the pin must be identified by the user and

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returned to the server for authentication. The pin must be entered in sequence, and therefore representing a solution to an order-based problem. This is clearly shown by Pinkas in, for example, parag 34), the order-based problem comprising an arrangement of a plurality of objects whereby a user is asked to correctly identify at least a subset of the objects as well as to identify them in a particular order (the pin is comprised of characters, which are a form of an object, and must be recognized and entered in order as described in rejection of claim 1) the order being based at least in part upon a set of instructions provided to the user (parag 31 to 34 indicates that the user must follow instructions to enter the PIN), and the identification component communicating with an order-based problem database to retrieve order-based problems as needed (As shown in Fig. 1 and associated text, the PIN is generated in item 103, which is in communication with the server. Note also that parag. 32 shows that the PIN information is stored in memory).

10.2. As per claim 3, Pinkas is directed to the system of claim 2, the objects comprising images, pictures, shapes, characters, and other visual elements which are identifiable by a human (the characters in the pin are identifiable by a human).

10.3. As per claim 4, Pinkas is directed to the system of claim 3, wherein any one of the images, pictures, shapes, characters, and other visual elements vary in at least one of size, dimension, color, and distortion (parag. 24).

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10.4. As per claim 5, Pinkas is directed to the system of claim 1, the order-based problem being an order-based human interactive proof (HIP) (parag. 21, where it is shown a human interaction is detected and use of RTT is suggested).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 6-31, 65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinkas as applied to claims 1-5 above, and further in view of Mizrah (U.S. Patent Application Publication No. 2004/0225880, filed 5/7/2003).

12.1. As per claim 6, Pinkas is directed to the system of claim 1, the order-based problem being a "start to end" HIP wherein a user is required to find a path of a consistent type and identify objects such as characters along the path (per parag. 24, the characters must be recognized along a path from start to end. Pinkas suggests recognizing characters along a path. However, Pinkas does not specifically suggest recognizing a path. Mizrah clearly teaches recognizing a path by the user in Figs. 8-12 and associated text.

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Pinkas and Mizrah are analogous art as they are both directed to establishment of a secure channel between a user and a server. At the time of invention, it would have been obvious to a person skilled in art to incorporate Mizrah's teachings of recognizing a path to the system of Pinkas. The motivation to do so is suggested by Pinkas parag. 24, where it suggests mapping the characters in different locations on screen, and also use of different patterns that is recognizable by a human).

12.2. As per claim 7, Pinkas and Mizrah are directed to the system of claim 6, wherein the path of a consistent type comprises a subset of objects which are connected by a consistent type of connector, the connector being selected from a group consisting of any one of arrows, lines, dotted lines, dashed lines, and shapes (use of arrows to describe the path is suggested by Mizrah Fig. 9 and associated text).

12.3. Limitations of claims 8-24 are directed to use and modification of different types of shapes and patterns, inclusion of background and foreground noise to partially obscure the objects, use of different colors, sizes and other modifications to the image to make it recognizable by human and not by a machine, which are well know techniques to a person skilled in the art. Barring any unexpected results, all modifications and addition of noise included in claims 8-24 would have been obvious to a person skillful in the art of human interaction detection.

12.4. Limitations of claims 25, 27-30 is substantially the same as claims 1, 3-24 above.

12.5. As per claim 31, Pinkas and Mizrah are directed to the method of claim 30, the acceptable answer being at least one of the following: a correct answer; and an answer consistently received from a percentage of users, whereby the percentage exceeds a minimum threshold (a correct answer is an acceptable answer in Pinkas).

12.6. Claims 2, 26, and 65 have been cancelled by the applicant.

12.7. Limitations of claims 67 and 68 are substantially the same as claims 1, 3-25, 27-31 above.

### **Conclusion**

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of .

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farid Homayounmehr whose telephone number is (571) 272-3739. The examiner can be normally reached on 9 hrs Mon-Fri, off Monday biweekly.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***Farid Homayounmehr***

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***7/31/2007***

  
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